In the District Court of the United States for the Southern District of California, Central Division

Civil Action No. 6747–Y

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL CITY LINES, INC., ET AL., DEFENDANTS

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of the Supreme Court of the United States, as amended, the United States of America submits herewith its statement particularly disclosing the basis upon which the Supreme Court has jurisdiction on appeal to review the judgment of the district court entered in this cause on October 15, 1947. A petition for appeal is presented to the district court herewith, to wit, on December 3, 1947.

JURISDICTION

The jurisdiction of the Supreme Court to review by direct appeal the judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat.

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823; 36 Stat. 1167; 58 Stat. 272; 15 U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157; 38 Stat. 804; 43 Stat. 938; 28 U. S. C. 345).

The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Associated Press* v. *United States*, 326 U. S. 1; *United States* v. *Crescent Amusement Co.*, 323 U. S. 173; *Interstate Circuit, Inc.* v. *United States*, 306 U. S. 208.

STATUTES INVOLVED

The pertinent provisions of Sections 1, 2, 4, and 5 of the Act of July 2, 1890, 26 Stat. 209, as amended (15 U. S. C. 1, 2, 4, 5) commonly known as the Sherman Act, are as follows:

> SEC. 1. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal: * * *. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, * * *.
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> SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, * * *.
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> * * * * * *

SEC. 4. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

SEC. 5. Whenever it shall appear to the court before which any proceeding under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Section 12 of the Act of October 15, 1914, 38 Stat. 736, 15 U. S. C. 22, known as the Clayton Act, provides as follows:

> Any suit, action, or proceeding under the antitrust laws against a corporation may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts business; and all process in such cases may be served in the district of which it is an inhabitant, or wherever it may be found.

THE ISSUES AND THE RULING

This is an equity suit brought by the United States in the Federal District Court for the

Southern District of California, Central Division, charging 9 corporations with conspiring to acquire control of a substantial number of local transportation companies in various cities of the United States, and to monopolize and restrain commerce in busses, tires, tubes, and petroleum products sold to those local transportation companies, in violation of Sections 1 and 2 of the Sherman Act.

All of the defendants moved to dismiss the complaint on the ground that the District Court for the Southern District of California was not a convenient forum in which to try the cause and that the District Court for the Northern District of Illinois, Eastern Division (Chicago) was the most convenient forum. After the filing of supporting and opposing affidavits and oral argument, the district court rendered an opinion granting the motion to dismiss, basing its action on the doctrine of *forum non conveniens*.[1]

The complaint asserts the following: Three of the nine defendants, National City Lines, Inc., and its subsidiaries, American City Lines, Inc., and Pacific City Lines, Inc., own or control a

[1] On the day before the complaint was filed, a grand jury for the Southern District of California returned an indictment charging a similar offense against the same corporate defendants. On defendants' motion, the district court transferred the criminal case to the Northern District of Illinois, Eastern Division, pursuant to Rule 21 (b) of the Rules of Criminal Procedure. The opinion of the court is set forth in 7 F. R. D. 393.

number of local transportation companies operating streetcars and motorbusses in more than 42 cities and governmental subdivisions of 16 states of the United States, including 10 named cities of California. The other six defendants, sometimes called the "supplying defendants," are corporations variously engaged in the production and sale of busses, tires, tubes, or petroleum products. Pursuant to a conspiracy, the supplying defendants have advanced funds, aggregating almost $10,000,000 since 1939, to the other three defendants for the acquisition of local transportation companies, and the latter defendants have caused the local companies to purchase substantially all needed supplies of busses, tires, tubes, and petroleum products from the supplying defendants to the exclusion of products of competitors.

The defendants and their states of incorporation and principal places of business are as follows:

Corporation	State of organization	Principal place of business
National City Lines, Inc.	Delaware	Chicago.
American City Lines, Inc.	do	Do.
Pacific City Lines, Inc.	do	Oakland.
Standard Oil Co. of California	do	San Francisco.
Federal Engineering Corp.	California	Do.
Phillips Petroleum Co.	Delaware	Bartlesville, Okla.
General Motors Corp.	do	Detroit, Mich.
Firestone Tire & Rubber Co.	Ohio	Akron, Ohio.
Mack Manufacturing Corp.	Delaware	New York.

Affidavits filed on behalf of National in support of its motion to dismiss asserted that great and

undue hardship and expense would result from trial of the cause in Los Angeles. National was said to be the central defendant in that its relations with the other defendants constituted the core of the complaint. These relations were stated to be based upon contracts negotiated primarily in Chicago from which point National and its interests have always been managed and supervised and where its officials, employees, and files were located. Transportation of numerous officials and great masses of documents from Chicago to Los Angeles for a possibly protracted trial would, it was averred, occasion great hardship. Affidavits on behalf of other defendants asserted that their main defense resided with National whose convenience should therefore be paramount; and Firestone and Mack, of the supplying defendants, further averred that their respective home offices were substantially nearer Chicago than Los Angeles and that their individual convenience would likewise be promoted.[2]

[2] The district court rendered its opinion ordering transfer of the criminal case while the motions for dismissal of the civil complaint were pending. Transferral of the criminal case to the Northern District of Illinois was averred by defendants to be an additional reason of great importance why the Southern District of California was an inconvenient forum for trial of the civil cause. The Government urged that the defendants were not in a position to complain that hardship resulted to them by reason of the granting of their own motion to transfer the criminal action and, moreover, that seven individuals, officers of the corporate defendants, were joined as defendants in the latter cause and that the

Affidavits filed on behalf of the United States averred that the Government expected to establish proof of conspiracy by proving a series of agreements negotiated in California, by calling a substantial number of witnesses from the Pacific Coast area, and by introducing a large amount of documentary evidence from companies doing business in the Pacific Coast area. The Government further averred that National's operations were decentralized, with Pacific Coast operations under the supervision of a National vice-president resident in Los Angeles; that assets of National in local operating companies in Los Angeles and the San Francisco area exceeded the total assets of all so-called "Chicago operated companies"; that the volume of defendants' purchases and sale of busses, tires, tubes, and petroleum products was far greater on the Pacific Coast than in any other area of the country; and that the flowering of the conspiracy was effected by National's acquisition of the Los Angeles transit system as to which the Government expected to offer detailed proof locally available.

The district court, after recognizing that the present cause was brought under the special venue provision of the Clayton Act (*infra*, p. 4), decided that under the rulings of this Court there was scope for application of the doctrine of *forum*

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protection of their rights may have importantly influenced the court's determination to effect the transferral of the criminal action.

non conveniens under both general and special venue statutes unless, in the case of a special venue statute, its legislative history showed congressional intention to confer an absolute right of venue. After stating that no such intention was apparent from the legislative history of the Clayton Act, the court decided that the nature of the action and an analysis of the facts presented in the affidavits established the inconvenience for the defendants of the Southern California forum.[3] The court indicated that the supposed lack of inconvenience to the Government resulting from the dismissal and the nature of the relief requested (which, if granted, might involve continuing administration of what the court considered a business substantially conducted from Chicago) were additional considerations motivating its conclusion.

THE QUESTIONS ARE SUBSTANTIAL

Section 12 of the Clayton Act is a special venue statute applicable to cases brought under the Federal antitrust laws (*Eastman Co. v. Southern Photo Co.*, 273 U. S. 359, 372). It provides that any such action against a corporation "may be brought not only in the judicial district whereof it is an inhabitant, but also in any district wherein it may be found or transacts busi-

[3] The district court referred to and substantially relied upon its more detailed analysis of the facts in its opinion in the criminal action.

ness." We interpret the decision of this Court in *Gulf Oil Co.* v. *Gilbert*, 330 U. S. 501, as clearly recognizing that there is no scope for application of the doctrine of *forum non conveniens* under a special venue statute. See also *Baltimore & Ohio Ry.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois Central Ry.*, 315 U. S. 698. Where Congress has authorized legal actions under particular statutes and has fixed the venue of such actions by special provision, courts are not free to refuse to exercise their jurisdiction by applying the doctrine.

The district court's conclusion that, even under concededly special venue provisions, the doctrine of *forum non conveniens* may be applied unless the legislative history of the provision discloses congressional intent to the contrary, is manifestly erroneous. The legislative intent of the venue provision here in question is plain from the provision itself and no resort to underlying legislative history is required or permitted. If the legislative history is to be examined, then it is apparent from that source also that Congress intended to prescribe an absolute right of venue in antitrust cases. See, e. g., 51 Cong. Rec. 9415.

In addition to the impropriety of the district court's ruling on the applicable legal principles, we submit that it clearly erred in concluding that the facts of this case provide an appropriate basis for application of the doctrine of *forum non conveniens* as a ground for dismissing the complaint.

In the case of a nation-wide conspiracy engaged in by large corporate defendants operating in many states, it is highly improbable that any forum could be chosen which would not involve the transportation of witnesses and documents over substantial distances and which would not in some respects or as to some defendants be less convenient than another. The facts here disclose that the conspiracy charged against defendants had its most significant manifestations in or conveniently near the forum in which the action was commenced, and that the means of proving or disproving the alleged conspiracy are available to a substantial degree from witnesses or documents in the forum chosen.

If the standards enunciated in this case are to govern, then the Government might have great difficulty in antitrust actions in finding a forum sufficiently convenient for trial of the cause. Undoubtedly it will mean that the Government will frequently find it necessary to bring one or more lawsuits solely to find out where it will eventually be permitted to try its cause.

Respectfully submitted.

Philip B. Perlman,
PHILIP B. PERLMAN,
Solicitor General.

DECEMBER 1947.

In the District Court of the United States, Southern District of California, Central Division

Honorable LEON R. YANKWICH, *Judge*

No. 6747-Y Civil

UNITED STATES OF AMERICA, PLAINTIFF

v.

NATIONAL CITY LINES, INC., AMERICAN CITY LINES, INC., PACIFIC CITY LINES, INC., FIRESTONE TIRE & RUBBER COMPANY, GENERAL MOTORS CORPORATION, PHILLIPS PETROLEUM COMPANY, MACK MANUFACTURING CORPORATION, STANDARD OIL COMPANY OF CALIFORNIA, FEDERAL ENGINEERING CORPORATION, DEFENDANTS

OPINION

APPEARANCES

For the government: Tom C. Clark, Attorney General of the United States; John F. Sonnett, Assistant Attorney General; William C. Dixon, Special Assistant to the Attorney General; Robert L. Rubin, Special Assistant to the Attorney General; James E. Kilday, Special Assistant to the Attorney General; Jesse R. O'Malley, Special Attorney; Leonard M. Bessman, Special Attorney; James M. Carter, United States Attorney.

For the defendants: National City Lines, Inc., American City Lines, Inc., Pacific City Lines, Inc., by Hodges, Reavis, Pantaleoni & Downey, New York; O'Melveny & Myers, Louis W. Myers, Pierce Works, Jackson M. Chance, Los Angeles, California. Firestone Tire & Rubber Co., by Joseph Thomas, Akron, Ohio; Haight, Trippet & Syvertson, Oscar A. Trippet, Frank B. Yoakum, Sr., Los Angeles, California. General Motors Corporation, by Cosgrove, Clayton, Cramer & Diether, T. B. Cosgrove, Leonard A. Diether, Los Angeles, California. Phillips Petroleum Company, by Finlayson, Bennett, & Morrow, H. T. Morrow, Los Angeles, California. Mack Manufacturing Corporation, by Wright & Millikan, Charles E. Millikan, Los Angeles, California. Standard Oil Company of California, Federal Engineering Corporation, by Lawler, Felix & Hall, John M. Hall, Los Angeles, California.

YANKWICH, *District Judge:*

I

THE NATURE OF THE PROCEEDINGS

On August 14, 1947 (1), in *United States* v. *National City Lines, et al.*, I transferred to the Northern District of Illinois, Eastern Division, a criminal antitrust prosecution instituted against the nine corporate defendants involved in this suit and seven individuals. The ruling was made under the provision for change of venue contained in the Federal Rules of Criminal Procedure (2).

In the present suit, I am asked to dismiss a Complaint in equity instituted by the Government

under Section 4 of the Sherman Anti-Trust Law (3). The factual background of the two cases is the same.

The States of organization of the defendants are as follows: National City Lines, Inc., Delaware; American City Lines, Inc., Delaware; Pacific City Lines, Inc., Delaware; Standard Oil Company of California, Delaware; General Engineering Corporation, California; Phillips Petroleum Company, Delaware; General Motors Corporation, Delaware; Firestone Tire & Rubber Company, Ohio; Mack Manufacturing Corporation, Delaware.

The Government claims that all the defendants except Phillips do business in the district or are to be found in it. However, the affidavits on file show conclusively that only three of the defendants do business or are found in the district—Standard, General Motors, and Firestone. The chief defendants, *through whom control is exercised*—National and American—have always had their main offices in Chicago, Illinois, where all their records are kept.

In substance, the Government charges that National and its subsidiaries, American and Pacific, own and control, or have a substantial financial interest in corporations which are referred to as "operating companies," and which are engaged in providing local transportation service in more than forty-two cities in sixteen States.

The operating companies of the defendants National, American, and Pacific use large quantities of busses, tires, tubes, and petroleum products, which are manufactured and handled by the supplier defendants, such as Phillips, Standard, Gen-

eral Motors, Mack, and Firestone. The Government charges that, beginning on or about January 1, 1937, and continuing to the filing of the Complaint on April 10, 1947, the defendants have engaged in an unlawful combination and conspiracy to acquire ownership, control, or a substantial financial interest in a substantial part of local transit companies in various cities, towns, and counties in various States of the United States and

> to restrain and to monopolize the aforesaid interstate commerce in motor busses, petroleum products, tires and tubes sold to local transportation companies in cities, counties and towns in which National, American, and Pacific have, or have acquired, or in the future acquire, ownership, control or a substantial financial interest in said local transportation companies, all in violation of Sections 1 and 2 of the Sherman Anti Trust Act. Defendants threaten to and will continue to violate Sections 1 and 2 of the Sherman Anti Trust Act unless the relief hereinafter prayed for is granted.

The means of achieving this result are stated to be these: "Supplier" defendants have furnished money and capital to National, American and Pacific who have, in turn, caused their operating companies to purchase practically all their requirements in tires, tubes, petroleum products and busses from the supplier defendants to the exclusion of products competitive with them. Money made available by the supplier defendants was used to acquire control of local transit companies through the operating companies. National, American, and Pacific would not renew

contracts with others for the purchase or rental of materials and equipment without the consent of the supplier defendants. When an operating company was sold, National, American, and Pacific would require the new owner to assume the burden of the contracts for the exclusive purchase of equipment and supplies. No change of type of equipment or conversion to another type would take place without the consent of the supplier defendants. The business of dealing in such supplies and equipment would be allocated to the supplier defendants in an artificial, arbitrary and uncompetitive manner. Between January 1, 1939, and the date of the filing of the Complaint, the amounts of stock purchased by the supplier defendants in National, American, and Pacific were as follows:

Name of supplier defendant:	Amount paid for stock purchased
Standard Oil Company of Calif., Federal Engineering Corporation	$2,074,310.57
General Motors Corporation	3,190,802.32
Phillips Petroleum Company	1,574,064.82
Firestone Tire & Rubber Company	1,383,408.41
Mack Manufacturing Corporation	1,300,071.43

The effect of the combination and conspiracy, the Complaint avers, is to eliminate competition from other suppliers in the sale of supplies and equipment to National, American, and Pacific and their operating companies, and to restrain interstate commerce in such equipment substantially and unreasonably, so far as the transportation companies controlled by National, American, and Pacific are concerned, to charge non-competitive prices for such equipment and to allocate the nation-wide markets of the defendants National,

American and Pacific and their operating companies for supplies and equipment between the various supplier defendants. To end these practices, the Government seeks a decree declaring that the defendants are engaged in a conspiracy in violation of the Sherman Act, that the supplier defendants be required to divest themselves of stock and other interests in the traction companies, that contracts between the parties be declared void, and that the traction and operating companies be enjoined from acquiring their equipment from the suppliers. In addition to this, the following more specific prayers are included which are set forth in full because of their significance in the discussion to follow:

> 5. That the defendants National, American, and Pacific be ordered to make such disposition of their interests and holdings in local transportation companies as is necessary to restore competition and to dissipate the effects of the unlawful conspiracy; and that defendants National, American and Pacific be permanently enjoined from acquiring, directly or indirectly, any financial interest in any local transportation system operating in any city, town or county of any State of the United States without first obtaining the approval and authority of this Court;
>
> 6. That the defendants herein and each of them and their officers, directors and representatives and all persons and corporations acting or claiming to act on behalf of them be perpetually enjoined and restrained from combining and conspiring to monopolize or to restrain interstate trade

and commerce of the United States in the manner and by the means described herein, and be perpetually enjoined from engaging in or participating in agreements, understandings, practices or arrangements having a tendency to revive or continue any of the aforsaid violations of the Sherman Anti Trust Act."

The defendants have moved to dismiss the Complaint upon the ground of inappropriate forum. Their motions bring into play the doctrine of forum non conveniens.

II

THE DOCTRINE OF FORUM NON CONVENIENS

The doctrine of forum non conveniens is not of statutory origin. In Anglo-American law, it has been used as a means of declining jurisdiction whenever "considerations of convenience, efficiency, and justice" (4) point to another tribunal than that chosen by a litigant as the appropriate tribunal. And courts of equity will "go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved" (5).

This doctrine which permits a court having jurisdiction to refuse to exercise it has been applied either under its Latin name, forum non conveniens, or under its truncated English name, inappropriate forum, in many cases arising in Admiralty (6) and in Equity (7).

The problem before us must be solved in the light of the principles which have governed its application.

In each instance, the Court which declined to exercise jurisdiction had jurisdiction and the plaintiff had a choice of venue. Thus, when, under a statute, jurisdiction in a proceeding to limit liability could be brought in either the state court or the federal court, the federal court, in its discretion, could enjoin the prosecution of the action in the state court (8). And when a stockholders' suit relating to the affairs of a corporation could properly be brought in either the state or the federal courts, it was held the federal district court could, in its discretion, dismiss the suit (9).

The more recent cases of the Supreme Court applying this doctrine must be interpreted in the light of these principles (10). Indeed, the nub of the controversy between the parties here is as to the meaning of these cases, and especially the *Gulf* and *Koster* cases (11).

It is the Government's contention that these cases lay down a distinction between general-venue and special-venue statutes and that the doctrine of forum non conveniens does not apply to cases in which the Congress, *by a special-venue statute*, has given to the plaintiff the choice of forums.

None of these cases define the difference between the two types of venue statutes.

It is evident, however, that a general venue statute would be exemplified by the provisions of the Judicial Code to the effect that actions shall generally be brought against a person only in the district of which he is a resident, or, in diversity cases, in the district of the residence of either the plaintiff or the defendant (12). The mere existence of a choice of forums does not, as the cases already cited (13) indicate, make a statute one of special venue. Special venue statutes are statutes in which the Congress has legislated with reference to a particular kind of actions and has decreed that they might be brought in several forums, in some of which they could not be brought but for such legislation. Illustrative are: actions relating to copyrights (14), patent infringements (15), actions for the recovery of taxes under the Internal Revenue Act (17), and stockholder's derivative suits (18). Of the same type is the special venue provision of the Federal Employer's Liability Act (19). This Act gives to an injured employe a choice of three places where he might bring his action: (1) the district of the defendant's residence; (2) the district where the cause of action arose, and (3) the district in which the defendant is doing business at the time when the action is begun.

Concededly suits like the present one, instituted by the Government to enjoin violations of the Sherman Anti Trust Act, are also governed by a special venue provision. Under it, such suits may

be brought in the judicial district (1) where the corporation is an inhabitant, (2) in the district where it may be found, or (3) in the district where it transacts business (20).

III

DOES THE DOCTRINE OF INAPPROPRIATE FORUM APPLY TO ACTIONS BROUGHT UNDER SPECIAL VENUE STATUTES?

It is the contention of the Government that when an action is governed by a special venue provision, the choice of forum by the actor in the case, be he individual or government, is absolute, and the doctrine of inappropriate forum is inapplicable.

There is a language in the *Gulf* case which, at first blush, lends support to this contention. I so read the case myself and gave expression to the thought in a recent opinion (21). The language reads:

> It is true that in cases under the Federal Employer's Liability Act we have held that plaintiff's choice of a forum cannot be defeated on the basis of *forum non conveniens*. But this was because the *special venue* act under which the cases are brought was believed to require it. *Baltimore & Ohio R. R.* v. *Kepner*, 314 U. S. 44; *Miles* v. *Illinois Central R. R.*, 315 U. S. 698. Those decisions do not purport to modify the doctrine as to other cases governed by the *general venue* statutes (22). [Italics added.]

This language must be studied in the light of the cases to which the Supreme Court was re-

ferring, the *Federal Employer's Liability* cases (23), and of the opinion delivered on the same day in the *Koster* case and written by the same Justice (24).

When passed in 1908, the Federal Employer's Liability Act contained no special venue provisions. In 1910, it was amended to allow the present choice. Even before the decisions in the *Kepner* (25) and *Miles* (26) cases, lower federal courts had held that the privilege of venue conferred by this section was absolute and not subject to the discretionary power of the courts to nullify the choice upon any ground (27). Writers have inveighed against the unfairness of allowing so wide a choice (28). Occasionally even a trial judge has expressed regret at his inability to grant relief in such cases (29). And there is now pending a Bill before the Congress to limit the exercise of the right of the employé to choose the forum (30). But, except during the First World War, when the Director General of the Railroads, under his war powers, issued an order providing that suits should be brought only in the district where the plaintiff resided at the time of the accrual of the action, or where the cause of action arose—an order which received the approval of the Supreme Court (31)—there has been no deviation from this strict interpretation of the venue provision. And when the Supreme Court adopted, in the *Kepner* and *Miles* cases, this rigorous interpretation of the statute, it

merely continued the tradition which had been inaugurated by the lower courts. They all saw in the special venue provision of this particular law a *direct* mandate of the Congress which left no room for variation. This is quite evident from the following language in the concurring opinion of Mr. Justice Jackson in the *Miles* case:

> The functioning of this backward system of dealing with industrial accidents in interstate commerce burdens it with perhaps two dollars of judgment for every dollar that actually reaches those who have been damaged, and it leaves the burden of many injuries to be borne by them utterly uncompensated. Such being the major burden under which the workmen and the industry must function, I see no reason to believe that Congress could not have intended the relatively minor additional burden to interstate commerce from *loading the dice a little in favor of the workman* in the matter of venue. It seems more probable that Congress intended to give the disadvantaged workmen some leverage in the choice of venue, than that it intended to leave him in a position where the railroad could force him to try one lawsuit at home to find out whether he would be allowed to try his principal lawsuit elsewhere. This latter would be a frequent result if we upheld the contention made in this case and in the *Kepner* case (32). [Italics added.]

This concurring opinion has a special significance because, with four justices dissenting, there would be no majority opinion without it. Added

significance is given to this language by the fact that Mr. Justice Jackson also wrote the majority opinions in the *Gulf* and *Koster* cases. And, because the question here turns on the meaning of the language already quoted in the *Gulf* case, the historical review which we have just given is of utmost significance. It shows clearly that what Mr. Justice Jackson, speaking for the majority of the court, meant to say was not that *any* special venue act excluded the application of the doctrine of inappropriate forum, but that *the particular special venue statute under consideration*, in the light of its history, excluded the application of the doctrine. And this is also apparent from a consideration of the opinion of Mr. Justice Jackson in the *Koster* case. That case involved an action brought under a special venue statute which is a part of Section 51 of the Judicial Code (33) and which reads:

> except that suit by a stockholder on behalf of a corporation may be brought in any district in which suit against the defendant or defendants in said stockholders' action, other than said corporation, might have been brought by such corporation and process in such cases may be served upon such corporation in any district wherein such corporation resides or may be found.

That this is a special venue statute is evident not only from its wording but also from the following language which appears in Footnote 2 of the opinion in the *Koster* case (36):

> This reinforces the view that the cause of action is that of the corporation, if reinforcement is necessary. Moreover, it is obvious that the venue statute is not concerned with facilitating suit in the district of the stockholder's residence, but assures only that suit can be brought in any district in which the corporation can be sued. *Greenberg* v. *Giannini,* 140 Fed. (2) 550. When suit is brought in the district of the stockholder's residence, the venue statute does not provide for service on the corporation "in any district wherein such corporation resides or may be found." Since the corporation is an indispensable party, *Davenport* v. *Dows,* 18 Wall. 626, it must be only the chance stockholder's suit which can be maintained at the stockholder's residence. Corporations which have stockholders in many of the states may not find it necessary to qualify to do business and consent to be sued in all the states in which they have stockholders.

It is quite evident that, if the *Gulf* case is interpreted as holding that the doctrine of forum non conveniens does not apply to actions brought under special venue statutes, the ruling in the *Koster* case does not accord with it. For, as already appears from what precedes, there the court, although dealing with a special venue statute, nevertheless applied the doctrine to the situation. The two decisions made on the same day, in opinions written by the same Justice, can be reconciled only if we read the teaching of the *Gulf* case as here suggested—namely, that the court refused to apply the doctrine of forum non

conveniens to *Federal Employer's Liability* cases, not because such cases are governed by a *special venue statute,* but for the reason that the history of the law, the desire of the Congress to overbalance the privileges under the law in favor of the railroad employees, made the choice under the particular venue statute absolute.

So the discussion which precedes may be summed up in this manner:

The doctrine of inappropriate forum can be applied by courts in all cases in which it has been applied in the past in Anglo-American jurisprudence. And this should be done, whether dealing with a general or with a special venue statute. Only when the legislative history shows an intent to confer a right so absolute as to exclude any interference on the part of courts, are we justified in failing to give effect to this doctrine.

IV

THE VENUE HERE

We have already referred to the venue provision in the Sherman Antitrust Act (36). The power of the Congress to enact such provision is undisputed (37). But there is nothing in its legislative history to indicate that the Congress, by giving to the Government a choice of forums, intended to deprive the courts of their right to forbid resort to an inappropriate forum.

That the Congress did not intend to make the

Government's choice absolute is also evidenced by the provision of the Act which reads (38):

> Whenever it shall appear to the court before which any proceeding under Section 4 of this title may be pending, *that the ends of justice require* that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof. [Italics added.]

Had the Congress intended to give to the Government complete mastery over the situation, it certainly would not have made the presence of other parties dependent upon the determination by the court that the ends of justice require such presence. Of the nature of this power, a three-judge court said in *United States* v. *Standard Oil of New Jersey* (39):

> The question presented by the petition for that purpose was, not in which court the ends of justice required the complainant to choose to institute its suit, but whether or not in this suit the ends of justice required that the non-resident defendants should be brought in.
>
> The exercise of the power conferred upon the courts by the Constitution and the acts of Congress, to acquire jurisdiction of controversies and parties by the issue and service of their process, is not discretionary with the courts, when a complainant demands it. It is an imperative duty, which may not be renounced, and whose discharge may not be evaded. It is the duty of a

> court of equity to finally determine the entire controversy before it, and to do complete justice by adjusting all the rights involved therein. Hence, in every suit in which the power to acquire jurisdiction of the subject-matter and of the parties is conferred upon the court, the duty is imposed upon it, if its discharge is invoked by the complainant, to summon and hear, before decision, not only every indispensable party, but every necessary party within reach of its process, every party who has an interest in the controversy, and who ought to be made a party to the suit in order that the court may finally adjudicate the whole matter, although if he were not amenable to process, final justice might be administered between the other parties without his presence.

In giving effect to public policy through suits of this character, courts are more likely to grant or withhold relief than in dealing with private interests (40).

That the facts in this case call for the application of the doctrine of forum non conveniens is apparent from the nature of the action and from the analysis of the facts presented in the affidavits which I made in the companion criminal prosecution (41). Practically the same affidavits are before me now. They show that the trial of the case in this district would require the chief defendants to go to places distant from the location of their business, to bring witnesses from afar, to move into this district records which are located in distant cities where their headquarters are

maintained, and, in case the decree asked for by the Government is made, it will call for control of foreign corporations over a long period of years by a court which is far removed from the principal places of business of the main defendants. Indeed, the very allegations of the Complaint indicate that National and American were the instrumentalities through which this monopoly is established, that they, especially National, are responsible for the tie-ins, through acquisition of stock by the suppliers, and for the monopolistic practices which *they and not the local operating companies* engineered with the suppliers and through which the throttling of competition in supplies and equipment, of which the Government complains, is achieved.

We should also emphasize the fact, already adverted to elsewhere in this opinion, that the Government by the decree it asks in this case, is seeking to wrest control of local transportation companies from National, American, and Pacific and to require them to divest themselves of such control. And *this type of long distance control of corporations who are not engaged in business in the state* is one of the considerations which have led to the application of the doctrine of forum non conveniens.

The language of the court in *Williams* v. *Green Bay W. R. R.*, is very apposite (42):

> We mention this phase of the matter to put the rule of forum non conveniens in

> proper perspective. It was designed as an "instrument of justice." Maintenance of a suit away from the domicile of the defendant—whether he be a corporation or an individual—might be vexatious or oppressive. An adventitious circumstance might land a case in one court when in fairness it should be tried in another. *The relief sought against a foreign corporation* may be so extensive or call for such detailed and *continuing supervision that the matter could be more* efficiently handled nearer home. [Italics added.]

Of the nine defendants, five—National, American, Pacific, Mack, and Phillips—are not doing business in California and are not to be found in it. Federal Engineering merely makes investments for Standard, does no business in the district, and is not found in it. The control by National of the Los Angeles Transit Lines and of Long Beach City Lines, through ownership of their corporate stock, does not constitute "doing business" in the State (43).

It follows that the factual situation here calls for the application of the doctrine of forum non conveniens, in the interest of justice, just as the same facts in the companion criminal prosecution required its transfer to another district. And this conclusion is also commanded by the fact that the decree sought by the Government will require control of the parent companies, National and American, over a long period of time, by a court far removed from their domiciles.

The Government has suggested that a dismissal of this Complaint might bring about an impossible situation. They refer to the fact that the principal places of business of the defendants are scattered throughout the country. And they express the fear that no matter where the Government reinstitutes its suit, some of the defendants might urge the application of the doctrine of inappropriate forum to them. The matter has received serious consideration. A court of equity should aim to balance societal and individual interests and to maintain the proper equilibrium between private rights and public weal (44). And, in applying a statute like the Sherman Antitrust Act embodying a Governmental policy of long standing, which aims to maintain in the economic field some semblance of equality and to prevent the hand of monopoly from suppressing or impeding the free flow of commerce between States, we should hesitate to adopt an approach to a problem like the one involved here which would result in quashing forever what the Government considers a meritorious suit.

But I feel that no disastrous result to the enforcement of the antitrust laws need, *necessarily*, follow a ruling adverse to the Government on this motion. Our action is reviewable on direct appeal to the Supreme Court, (45) within a maximum of sixty days after the entry of the final decree of dismissal. I am also of the view that this suit can

be refiled in the Northern District of Illinois, Eastern Division, where National and American have their principal place of business, and withstand any further attack on venue. More, under date of September 18, 1947, counsel for all the defendants have joined in a letter in which they state that all the defendants believe that the Northern District of Illinois, Eastern Division, *to which the companion criminal prosecution has already been transferred,* is the proper forum for this action and that if this motion is granted and the suit is refiled there, the defendants will not move for its dismissal on the ground of inconvenient forum. At their request, the statement has been made a part of the record in this case.

In sum, whether the Government challenges this ruling and seeks a direct appeal to the Supreme Court within the sixty-day period, or accepting it, refiles, the "set-back" will be temporary only. And the insuccess of the Government being based not on the court's disapproval of the social philosophy behind the Sherman Antitrust law (46), but only on a disagreement as to the tactics in a particular case, which can be remedied readily, the Government's determination to enforce the statute vigorously will stand unaffected.

The motions to dismiss are granted.

Dated this 29th day of September 1947.

LEON R. YANKWICH,
Judge.

NOTES TO TEXT

1. *United States* v. *National City Lines, et al.*, 1947, D. C. Cal., 72 Fed. Sup. —.

2. Sec. 21 (b) Federal Rules of Criminal Procedure.

3. 15 U. S. C. A. 4.

4. *Rogers* v. *Guaranty Trust Co.*, 1933, 288 U. S. 123, 131.

5. *Virginian Ry.* v. *Federation*, 1937, 300 U. S. 515, 552.

6. *Langnes* v. *Green*, 1931, 282 U. S. 531; Canada Malting *Co.* v. *Paterson Co.*, 1932, 285 U. S. 413.

7. *Kansas City Southern Ry. Co.* v. *United States*, 1931, 282 U. S. 760, 763; *Rogers* v. *Guaranty Trust Co.*, 1932, 288 U. S. 123; *Virginian Ry.* v. *Federation*, 1937, 300 U. S. 515; *Massachusetts* v. *Missouri*, 1939, 308 U. S. 1, 19.

8. *Langnes* v. *Green*, 1931, 282 U. S. 531.

9. *Rogers* v. *Guaranty Trust Co.*, 1932, 288 U. S. 123.

10. *Williams* v. *Green Bay & W. R. Ry. Co.*, 1946, 326 U. S. 549; *Gulf Oil Corporation* v. *Gilbert*, 1947, 330 U. S. 501; *Koster* v. *Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

11. See cases in Notes 7 and 8.

12. 28 U. S. C. A. 112 (a) and (b).

13. See cases in Notes 7 and 8. And see, *Neirbro Co.* v. *Bethlehem Shipbuilding Corporation*, 1939, 308 U. S. 165.

14. 17 U. S. C. A. 35.

15. 28 U. S. C. A. 109. The language of Mr. Justice Brandeis in *Lumiere* v. *Wilder, Inc.*, 1923, 261 U. S. 174, 177, lends support to the view here expressed as to what a special venue statute is. Speaking of the special venue provision in copyright cases, he says:

"Ordinarily a civil suit to enforce a personal liability under a federal statute can be brought only in the district of which the defendant is an inhabitant: Judicial Code, No. 51. In a few classes of cases, a carefully limited right to sue elsewhere has been given. In patent cases it is the district of which the defendant is an inhabitant or in which acts of infringement have been committed and the defendant has a

regular and established place of business. Judicial Code No. 48: *W. S. Tyler Co.* v. *Ludlow-Saylor Co.*, 236 U. S. 723. In cases under the antitrust laws, it is where the defendant 'resides or is found or has an agent;' (Act of October 15, 1914, c. 323, No. 4, 38 Stat. 730, 731); and in the case of corporations, the 'district whereof it is an inhabitant' or 'any district wherein it may be found or transacts business.'"

16. 28 U. S. C. A. 105. The United States Court of Appeals for the District of Columbia has held that the doctrine of forum non conveniens is applicable to an action of this character. See *Urquart* v. *American-La France Foamite Corporation*, 1944, 144 F. (2) 542, 544.

17. 15 U. S. C. A. 77 (2).

18. 28 U. S. C. A. 112 (a).

19. 45 U. S. C. A. 56.

20. 15 U. S. C. A. 22.

21. *United States* v. *Standard Oil Co.*, decided on July 14, 1947, 72 Fed. Sup. —.

22. *Gulf Oil Co.* v. *Gilbert*, 1947, 330 U. S. 501.

23. *Baltimore & Ohio Ry.* v. *Kepner*, 1941, 314 U. S. 44; *Miles* v. *Illinois Central Ry.*, 1942, 315 U. S. 698.

24. *Koster* v. *Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

25. *Baltimore & Ohio Ry.* v. *Kepner*, 1941, 314 U. S. 44.

26. *Miles* v. *Illinois Central Ry.*, 1942, 315 U. S. 698.

27. The following are among the Circuit Court cases in which the doctrine has been expounded: *Schendel* v. *McGree*, 1924, 300 Fed. 273; *Southern Ry.* v. *Cochran*, 1932, 56 F. (2) 1019; *Wood* v. *Delaware & H. R. Corporation*, 1933, 2 Cir., 63 F. (2) 255; *Chesapeake & Ohio Ry.* v. *Vigor*, 1937, 6 Cir. 90 F. (2) 7; *Southern Ry. Co.* v. *Painter*, 1941, 8 Cir. 117 F. (2) 100, 103, 106; and see, *Leet* v. *Union Pacific Co.*, 1944, 25 Cal. (2) 605, 609-610.

28. See *Thomas B. Gray*, Venue of Actions, 33 American Bar Association Journal, July 1947, page 659.

29. See the language of the late Judge Grover L. Moskowitz in *Sacco* v. *Baltimore & Ohio Ry. Co.*, 1944, D. C. N. Y., 56 Fed. Sup. 959.

30. H. R. 1639.

31. *Missouri Pacific Ry.* v. *Ault*, 1921, 256 U. S. 554; *Alabama etc. Ry. Co.* v. *Journey*, 1921, 257 U. S. 111.

32. *Miles* v. *Illinois Central Ry.*, 1942, 315 U. S. 698.

33. 28 U. S. C. A. 112.

34. *Koster* v. *Lumbermen's Mutual Co.*, 1947, 330 U. S. 519.

35. See cases in Notes 7 and 8.

36. 15 U. S. C. A. 22.

37. *Eastman Kodak Co.* v. *Southern Photo Co.*, 1927, 273 U. S. 359.

38. 15 U. S. C. A. 5.

39. 152 Fed. 290, 296. Counsel for the Government seem to think that this case teaches that the doctrine of *forum non conveniens* does not apply to antitrust cases. I do not so read it. It is to be borne in mind that the court was not asked to dismiss the action because of the choice of inappropriate forum. An order had been made by the Circuit Court to bring in the nonresident defendants. They moved to vacate the order and to quash the service of summons upon them. The court having exercised its judgment, having granted the order, and having determined that the ends of justice required the presence of the nonresident defendants, the matter was at an end. And the reviewing court, as the first sentence of the quotation says distinctly, *was not* determining in which court the ends of justice requiring the complainant to institute its suit, *but whether the ends of justice required that other defendants be brought in.* Clearly then, the question which confronts us here was not before the court in that case, and the ruling in it does not help the position of the Government in this case.

40. *Virginian Ry.* v. *Federation*, 1937, 300 U. S. 515, 552.

41. *United States* v. *National City Lines, et al.*, 1947, D. C. Calif., 72 Fed. Sup. —.

42. 326 U. S. 550.

43. *Peters* v. *Chicago, etc., Ry.*, 1907, 205 U. S. 364; *Philadelphia, etc., Ry.* v. *McKibbin*, 1917, 243 U. S. 264; *People's Tobacco Co., Ltd.* v. *American Tobacco Co.*, 1917, 246 U. S. 79, 87.

44. Roscoe Pound, A Survey of Social Interests, 1943, 57 Harvard Law Review, 1–39; Roscoe Pound, Law and the State, Jurisprudence and Politics, 1944, 57 Harvard Law Review 1193 et seq. Roscoe Pound, A Survey of Public Interests, 1945, 58 Harvard Law Review, 909–929.

45. 15 U. S. C. A. 29.

46. My attitude towards this law has been expressed in the following opinions: *United States* v. *Heating, Piping & Air Contr. Assn.*, 1940, D. C. Calif., 33 Fed. Sup. 978; *United States* v. *Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 966; *United States* v. *Food and Grocery Bureau*, 1942, D. C. Calif., 43 Fed. Sup. 974; *United States* v. *San Francisco Electrical Contractors Assn.*, 1944, D. C. Calif., 57 Fed. Sup. 57

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